



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

COMPLAINTS AGAINST THE POLICE

Framework for a New System

December 2000

Contents

	Page
Introduction	1
Objectives of a New Complaints Procedure	
A New Independent Body	
Definition of a Complaint	
Scope of the New Complaints System	2
Widening Access to the Complaints System	
Recording a Complaint	
Direction and Control	
Informal Resolution as an Alternative to Full Investigation	3
Investigations by the IPCC	4
Independent Investigating Teams	5
Powers for the Investigating Teams	
Powers for the IPCC in Relation to Complaints Investigated by the Police	
Discipline	6
Presenting Disciplinary Cases	
Constitution of a Disciplinary Panel	
Attendance at a Disciplinary Hearing	
Disciplinary Hearings in Public	
Openness	7
Collection and Use of Information	8
Civil Cases Against the Police	
Role of the IPCC in Regards to Criminal Proceedings	
Location of IPCC offices	

COMPLAINTS AGAINST THE POLICE

FRAMEWORK FOR A NEW SYSTEM

Introduction

The Home Office published a consultation document on 17 May which was based on a KPMG study commissioned by the Home Office on “Feasibility of an Independent System for Investigating Complaints Against the Police” and a study by Liberty on “An Independent Police Complaints Commission”. The consultation document invited responses by 30 June. We received 45 responses (28 from police bodies, 12 from other interested bodies and 5 from private individuals).

2. This paper:

- sets out the emerging framework for a new complaints procedure in the light of the consultation exercise;
- provides some explanation of how the framework was developed; and
- raises some specific points on which further views are sought.

3. The Government would welcome comments on the specific questions raised in this paper. **Comments should be sent to Wesley Illingsworth by 28 February 2001 at:**

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Objectives of a New Complaints Procedure

4. The proposed framework favoured by Ministers, if operated as we envisage, should lead to:
- increased public confidence and trust in the police and in the complaints system as a whole;

- increased accessibility, openness and independence;
- quicker resolution of complaints;
- improved communications with complainants;
- improved collection, collation and reporting of data.

5. Our starting point is the current legislation and this framework builds on that - but the result will be a fundamentally new system. These changes and additions will, inevitably, lead to an increase in the number of complaints and a proportion of them will be vexatious; this is the price of having a more accessible and more open procedure but the payback should be greater public confidence and trust in the police. All this will create additional pressure on resources which we will have to manage. This will be a great incentive for forces to help themselves by providing leadership and training in order to combat misconduct by its officers.

A New Independent Body

6. There will be a new independent body which will replace the Police Complaints Authority. It will be known as the Independent Police Complaints Commission (IPCC). It will have a much more independent and proactive role to build a system in which all sections of the community, and the police service, can have confidence.

Definition of a Complaint

7. The present definition of a complaint will be extended as follows:

- > a bystander who witnessed police misconduct will be allowed to make a complaint;
- > the scope of the new complaints system will cover in all respects regular police officers, irrespective of rank, special constables and civilian employees;

- **the IPCC will be expected to widen access to the complaints system by creating other gateways into it, and the IPCC will provide guidelines on how complaints can be made; and**
- **complainants will have a right to appeal to the IPCC against the refusal by the appropriate authority to record a complaint.**

8. A police officer should not be able to escape investigation of his/her misconduct because there is no 'victim' or if the victim in the incident does not want to be involved, fears retribution or cannot be located. There may be difficulties in conducting an investigation but this should not prevent a police force from accepting and recording a complaint. Therefore, a bystander who witnessed police misconduct will be allowed to make a complaint.

Scope of the New Complaints System

9. The existing police complaints procedure applies only to regular members of a police force and excludes special constables and civilian employees. However, many forces include special constables and civilian staff in their complaints procedure and regularising this across all forces will give all complainants equal opportunities to express their concerns.

10. Senior police officers above the rank of superintendent fall within the scope of the current complaints procedure. However, the system does not provide for the same robust treatment of complaints against senior officers as it does for complaints against non-senior officers. There is no good reason for senior police officers to be treated differently so long as the current responsibilities of police authorities and chief officers are maintained.

11. There was almost total support from all those who responded to the earlier consultation document for a single complaints system which encompasses the whole public face of the police, irrespective of status.

Widening Access to the Complaints System

12. If the public is to have trust and confidence in the police, the complaints system should be

more accessible to prospective complainants. Complainants may feel threatened by entering a police station or speaking to a police officer and, therefore, reporting a complaint should be as non-threatening as possible. This means giving the public a choice of where to make complaints. At present, the only alternative is for the PCA to receive complaints and forward them to the appropriate authority. There is no reason why this access cannot be widened and the IPCC will be expected to create other gateways into the complaints system - for example, through Citizens' Advice Bureaux - and to provide guidelines on how complaints can be made.

Recording a Complaint

13. The responsibility for formally recording a complaint, through whatever channel it is made, will remain with the police authority in regards to senior officers and with the chief officer in regards to other ranks, special constables and civilian staff. To do otherwise would complicate and lengthen what is a routine process which causes little friction except when there is a refusal to record. Therefore, complainants will have a right to appeal to the IPCC against the refusal by the appropriate authority to record a complaint.

Direction and Control

14. Where police conduct arising from the direction and control of a force leads to public concern and complaint, a chief constable and a police authority should have a duty to the community they serve to deal with the complaint in a meaningful way. The community would want to be assured, perhaps by legislation, that there is the means to be heard.

15. A mechanism is needed to deal with complaints against the direction and control of a police force either as part of or separate from the procedure for handling complaints against police misconduct. Questions to be addressed are:

- How should such a complaint be handled?
- Should all complaints be allowed or certain ones; if certain ones, which ones?
- Should there be an involvement for the IPCC or HM Inspector of Constabulary (HMIC) or both?

- Would the Police Authority be able to conduct an investigation into a complaint?
- Would the Police Authority be seen by the public to be independent?

Views on this issue are invited.

Informal Resolution as an Alternative to Full Investigation

16. In order to have a speedy and understandable process as an alternative to formal investigations for resolving complaints, the informal resolution process:

- **will be retained and renamed ‘local resolution’;**
- **will continue to be used for allegations which, if proved, would not lead to criminal or disciplinary proceedings. However, where there are no prospects of obtaining the necessary evidence to substantiate complaints, the appropriate authority will be able to apply to the IPCC for authority to use local resolution instead of formal investigation; and**
- **will be strengthened to provide a range of different approaches: management resolution, restorative conference and mediation.**

17. Also, local resolution in the complaints process will be strengthened as follows:

- **the IPCC will have a power to review how well local resolution is functioning and to ensure that officers are operating those processes in accordance with regulations and guidance;**
- **the IPCC will have powers to call for regular information from police forces on the use of the local resolution process and the outcomes in order to monitor and report on its use and to provide information and guidance for complainants;**
- **complainants will be given an explanation of how local resolution will work and what can reasonably be**

expected at the end of the complaints process;

- **complainants will be given a right of appeal to the IPCC if they are unhappy about the way the process is used; and**
- **complainants will be asked to provide a written statement of their agreement to local resolution.**

18. Local resolution provides a fast, efficient and effective method of resolving complaints and we should aim to use it as much as possible. At present, about a third of all complaints are resolved locally without the need for a formal investigation but there is scope to increase the numbers.

19. Where there is no prospect of obtaining the necessary evidence to substantiate a complaint, it may not be worthwhile mounting a formal investigation. Instead, a Chief Officer or Police Authority can apply to the IPCC for authority to use local resolution.

20. This must be done on a case-by-case basis, setting out the reason for the application.

21. The local resolution process will provide a framework for the investigating officer and the complainant to agree the most appropriate approach from management resolution, restorative conference or mediation. Information on the process and its appropriate use will be available to complainants. To protect complainants:

- police would need the written agreement of complainants for the use of the process; and
- there should be a right of appeal to the new independent body if complainants are unhappy about the way the system has been used or if the process is imposed - but not about the outcome where the system has been used properly.

22. The IPCC will be the guardian of the use of local resolution by monitoring and audit. The IPCC will be expected to review how it functions and to ensure that processes are used in accordance with regulations and guidance. Therefore, the IPCC will have powers both to gather information from police forces and to present it for public consumption.

Investigations by the IPCC

23. The IPCC will:

- **have referred to it any case falling into specified categories, whether or not a complaint has been made, and will have the discretion to investigate or supervise;**
- **have the call in power to investigate or supervise other complaints at its discretion;**
- **have its own investigating teams, independent from the police, made up of:**
 - ❑ **independent civilian investigation managers who will manage the teams on a day-to-day basis;**
 - ❑ **seconded senior police investigators;**
 - ❑ **remainder of the teams with suitable mixes of police and non-police members to achieve the optimum in both performance and public confidence; and**
- **initially, not have the powers of a police constable for the non-police personnel in its investigating teams since the seconded police officers can provide the necessary powers;**

24. Additionally,

- **the Secretary of State will have an enabling power to bestow upon non-police personnel in independent investigating teams all or part of the powers of a police constable and other powers as appropriate, after consulting police organisations and the IPCC;**
- **Chief Officers will have a legal obligation to:**
 - ❑ **produce and/or give access to the IPCC documents or other material as called for;**
 - ❑ **allow members of the IPCC to take away documents or other material, or take copies; and**
 - ❑ **allow entry to police premises.**

25. The Home Affairs Select Committee recommended that the independent body should be given the power to call in for possible supervision investigations which arise from any matter, whether or not it has been the subject of a complaint. The Government's view up to now has been that this should only be exercised on the direction of the Home Secretary. We propose now to make all incidents in specific categories mandatory for referral to the IPCC so that it can decide on a case-by-case basis whether to investigate itself or supervise a police investigation or neither.

26. It will be mandatory for forces to refer to the IPCC cases in specified categories, whether or not a complaint has been made. The IPCC will have the discretion either to supervise an investigation by a police force or to undertake the investigation itself. The IPCC will exercise its judgement based on the seriousness of the incident, its importance for public confidence and the resources available at the time. We do not propose to specify the proportion of complaints that should be investigated by the IPCC but it will need to have a sufficiently active role to guarantee standards and maintain public confidence.

27. The proposed categories in which complaint and non-complaint cases will have to be referred to the IPCC are:

- deaths in police care or custody;
- fatal road traffic incidents in which a police vehicle is involved;
- shooting incidents in which a police officer discharges a firearm in the course of a police operation;
- allegations of serious corruption involving police officers;
- miscarriages of justice resulting allegedly from misconduct by a police officer;
- allegations of racist conduct;
- serious arrestable offences allegedly committed by a police officer; and
- allegations that serious injury to a member of the public has been caused by a police officer.

28. The IPCC will also have powers at its discretion to call in for independent investigation or supervision other complaints not falling within those specified categories.

Views are invited on whether this discretionary call in power should extend to other matters not the subject of complaints.

Independent Investigating Teams

29. The teams will comprise a mix of police officers and non-police officers. Each IPCC investigation team will be overseen by an Independent Commissioner and managed on a day-to-day basis by an independent civilian investigation manager employed by the IPCC. A third senior member of an investigation team will be the operations manager who will be either a senior police investigator seconded to the IPCC or an IPCC investigator. Each team may also include serving officers under the direction of the Independent Commissioner.

Powers for the Independent Investigating Teams

30. There are differing views on giving IPCC investigators the full powers of a constable. This will need further consideration and, perhaps, a pragmatic approach. Initially, IPCC investigation teams should be able to function effectively by relying on both the powers of the police officers in its teams and the obligations placed on chief officers by statute to provide access to police premises and to documents or other material. Therefore, rather than allow the independent investigators the full powers of a constable from the outset, there will be an enabling power for the Home Secretary, through regulations, to bestow upon non-police personnel all or part of the powers of a police constable, after consulting appropriate police organisations, the IPCC and other bodies.

Powers for the IPCC in Relation to Complaints Investigated by the Police

31. In order for the IPCC to operate effectively and for it to be seen to be independent from the police, there will need to be a clear separation of powers and responsibilities.

- **Chief Officer or Police Authority will be responsible for providing the complainant with a full written account of the outcome of a formal investigation into a complaint against a police officer;**
- **complainant to have a right of appeal to the IPCC against the decision by the Chief Officer or Police Authority; and**

- **in dealing with an appeal from a complainant, the IPCC will undertake a comprehensive review of the case and should have the power to uphold the decision, advise or direct the Chief Officer or Police Authority to review the decision, call for a re-investigation, either supervised or not by the IPCC, or re-investigate the case itself.**

32. The current procedure enables decisions to be made without the benefit of the complainant's comments on the outcome of the investigation. If the complainant then raises objections to the decision, there is no power to reconsider that decision. The lack of any redress for the complainant undermines confidence in the system.

33. The IPCC would be able to operate effectively and independently if the home force had a more proactive role in dealing with complainants on completion of an investigation and if the IPCC has appellate powers. In this respect, the home force will:

- make the provisional decision about any action in relation to the conduct of the officers in the case;
- if necessary, meet the complainant or family and explain the results of the investigation;
- send a full written account of the investigation to the complainant setting out the way the investigation had been conducted, a summary of the evidence, the conclusions - including the proposed action to be taken against the officer concerned, reasons for those conclusions and any action taken to prevent a recurrence; and
- advise the complainant of their right of appeal to the IPCC against the provisional decision.

34. An important aspect of this process will be the willingness of forces, when appropriate, to acknowledge when errors have been made and/or when officers have acted improperly. This may raise issues of legal liability which can inhibit forces from openly admitting fault.

Views are invited on the potential for overcoming this barrier.

Discipline

35. In order to build public confidence in the end process of the new complaints system, additional powers will be required by the IPCC and the presiding officer of a disciplinary panel in regards to complaints cases:

- **the IPCC will have discretionary powers to present or to observe cases it investigated, and cases investigated by police, whether or not those cases were supervised;**
- **in disciplinary cases arising from a complaint, one of the three members of the panel to be independent of the police;**
- **as a consequence, Police Authorities to compile and maintain lists of independent people (excluding members of the police authority itself) eligible to sit on discipline panels;**
- **in attending a disciplinary hearing up to the point that a finding is reached, a complainant can be accompanied by up to three people of their choice;**
- **the presiding officer of a disciplinary hearing arising from a complaint to have the discretion to allow the complainant to be accompanied by more than three people if, in his/her opinion, the circumstances of the case justify it and there are no reasonable objections from the accused officer; and**
- **the presiding officer of a disciplinary hearing to have the discretion to exclude any persons.**

Presenting Disciplinary Cases

36. As with the handling of complaints, the handling of discipline proceedings can make or break public confidence and trust in the police. Therefore, changes to the proceedings which will make them more open but without detriment to the charged officer would be a step in the right direction. The complainant and the general public need to be assured that evidence in a disciplinary hearing will be presented fully and robustly. Therefore, giving the IPCC the option

to present or observe disciplinary cases would provide the police with a strong incentive to do just that.

Constitution of a Disciplinary Panel

37. The Home Affairs Select Committee suggested that in a case arising from a complaint, there should be at least one independent member of the disciplinary panel, the Government saw merit in it and it received widespread support. The Police Authority is well placed to maintain a list of independent people who can sit on disciplinary panels in its area. Panel members will be trained to clear national standards.

Comments on maintaining a list of trained, independent people would be welcomed.

Attendance at a Disciplinary Hearing

38. There was widespread support for extending the present arrangement where the complainant may attend disciplinary hearings up to the point that a finding is reached by allowing a representative and supporters (up to three people) to attend as well. The presiding officer will be expected to be even-handed when allowing the accused officer and the complainant to be accompanied by others.

Disciplinary Hearings in Public

39. In its response to the Home Affairs Select Committee report, the Government argued that the advantages in making disciplinary hearings open to the public at large were outweighed by the disadvantages with regard to the confidential nature of some aspects of most of the proceedings. It added that this would be allowing the public admittance to what is essentially a management exercise.

40. There are strong arguments on both sides; on the one hand, there are issues of greater openness and public confidence and, on the other, there are issues of police confidence and fairness to the accused officer. In general, the police oppose making disciplinary hearings open to the public but it is not opposed to exploring whether cases at the serious end of the scale should be

open to the general public. Two questions remain:

- how to define which cases should be public?
- how will direction be given to make a hearing public?

Further views are sought on this issue.

Openness

41. Openness can be increased by changing how the outcome of complaints investigations are dealt with and by enabling all concerned to make greater use of information gathered in the course of an investigation:

- **the IPCC, Chief Officers and Police Authorities, in their dealings with the complainant, should have the discretion to disclose information from the investigation of complaints subject only to a harm test; and**
- **the IPCC should have the freedom to use information received from reports and other documents from police forces, after excluding sensitive or demonstrably confidential material, to compile guidance, promotional and other material for the purpose of continuous improvement in the complaints procedure and in raising the public's awareness and understanding of the complaints procedure.**

42. The Government's response to the Home Affairs Committee's recommendation was that, in principle, it supports greater openness, particularly in the context of inquests into deaths in police custody, but it added that there were genuine considerations for the integrity of the complaints system and the inquest process from unrestricted disclosure of investigating officers' reports.

43. The Home Office consulted the police and other interested parties on how greater disclosure might be implemented in practice, but no consensus emerged. Following the earlier consultation exercise, disclosure of the investigation report continues to generate differences of opinion. It is disclosure of this document that most commentators believe is

fundamental to achieving public confidence in the police complaints system. Police bodies argue that the routine publication of investigation reports will lead to self-censoring of the reports, leaving them to consist of the facts alone and, thereby, rendering them worthless, giving rise to renewed allegations that openness does not exist.

44. The dilemma remains how to achieve openness while maintaining the integrity, candour and quality of the investigation report.

45. To enable the IPCC, Chief Officer or Police Authority to provide a complainant with a full written account of the outcome of a formal investigation into a complaint (see paragraph 33), they will need discretionary powers to disclose information from the investigation of complaints subject only to a harm test. The new procedures will mean that the body investigating the complaint will have a responsibility for giving the complainant a full and frank explanation of how and why the conclusions to an investigation were reached. In many cases, it will be possible for this report to incorporate all the relevant evidence considered during the course of the investigation.

46. The IPCC will be expected to set an example to forces by opening up its own reports of the cases which it has investigated. In itself, this should go a long way towards increasing public confidence since many of those cases will be the most serious or those attracting the greatest public interest.

47. In cases where the complaint is investigated by a police force, the complainant will have a right of appeal to the IPCC if it is felt that the written account does not provide a satisfactory explanation of what has been done and why. The IPCC will be able to consider the details of the case and, if appropriate, provide additional information to the complainant.

48. We recognise that there will be some material or information which should not be disclosed; for example, details which might identify a potentially vulnerable witness or reveal the identity of a confidential police informant. The body which has investigated the complaint, whether it is the IPCC or a police force, should be entitled to keep such information confidential where necessary. There may also be internal personnel management matters which should be conveyed to the management of the force

concerned, but will not be of direct interest to the complainant. Such matters could be included in a separate “management memorandum” from the investigating officer to the responsible authority.

49. We do not propose, therefore, to compel the disclosure of all relevant evidence in every case. There must be discretion for those who have investigated the complaint to decide whether it is necessary in the public interest to keep some information confidential. When the new legislation is in place, we will issue guidance to the IPCC and to Chief Officers about what should be contained in the investigation report which is sent to the complainant, and what should be omitted or excluded.

Collection and Use of Information

50. Unlike the PCA, which is restricted in explaining its work, the IPCC will be expected to do much more in both raising the public’s awareness of the complaints system and in demonstrating its independence from the police. Also, it will be expected to have a greater sense of ownership of the whole system and continuously seek to improve it. This will mean gathering information on all parts of the system and identifying problem areas. The IPCC will be active in developing and promoting best practice and removing weaknesses and, most importantly, helping to develop a culture in forces which centres on the needs of complainants.

51. In order to do all this, the IPCC will:

- need the power to gather information from reports and other document from police forces and to compile guidance, promotional and other material; and
- work with HMIC in inspecting forces’ performance in handling complaints.

Civil Cases Against the Police

52. When civil cases against the police are lost or settled, the criminal and disciplinary issues need to be reviewed:

- **on receipt of a notification of civil action, the appropriate authority will consider immediately the disciplinary and criminal issues and, if necessary, instigate an investigation;**

- **the appropriate authority will notify the IPCC of all civil cases at the outset and of the proposed action; and**

- **the IPCC will have the power to call in the case for supervision or independent investigation, according to the criteria used in complaints cases.**

53. There was overwhelming support from both police and non-police bodies for the review of criminal and disciplinary issues when civil cases against the police were lost or settled. Many police forces do review such cases and sometimes investigations follow. They believe that this practice should be adopted across all forces and, if it became a statutory requirement, it would lead to greater public confidence.

54. The IPCC will need notification of all civil cases at the outset and it will have the power to call in the case for supervision or independent investigation, according to the criteria used in normal complaints cases.

Role of the IPCC in Regards to Criminal Proceedings

55. In cases investigated by the IPCC:

- **the IPCC will be responsible for determining whether a case is submitted to the CPS for consideration and will have the power to submit it direct to the CPS.**

56. It will remain a CPS responsibility to provide the proper scrutiny and challenge and to decide if criminal proceedings are brought in complaints cases investigated by either the IPCC or police forces.

Location of IPCC offices

51. Current legislation empowers the PCA, with the consent of the Home Secretary and the Treasury, to set up regional offices in order to discharge its duties effectively and to delegate any of its functions to the regional offices. The IPCC will have the same power. We do not propose to stipulate in legislation where the IPCC should have its offices. Those decisions will be based on a pragmatic assessment as the work on developing

the IPCC proceeds, but the new body will need to ensure that it is accessible to complainants and to police forces in all parts of England and Wales.